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SOVEREIGNTY IN THE INDIAN REPUBLIC.

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The quest as to where sovereignty rests in the Indian Republic under the Constitution of India has been taken up by His Excellency Shri K.M. Munshi, Governor of Uttar Pradesh in his recent lectures under the Rt. Hon'ble V.S. Srinivasa Sastri, Endowment, University of Madras. He observed " The Constitution itself is not so sovereign. It is maintained by the support of the people whose representatives can unmake it in the same way as they made. We have seen in recent times how this Constitution can be amended with ease and promptitude." Later he adds "In substance the sovereignty in India was transferred to the Congress High Command as regards India and the Muslim League High Command for the areas which are now included in Pakistan..........................In this sense therefore the Constitution making sovereign power now in fact vests in the majority parties in the Legislatures for they represent that dominant minority in the country the leadership of which is accepted by the people and the power agencies of the army and the police by active support or passive acquiescence..............This discussion would show that the sovereign power in a State vests in the dominant minority in the country whose representatives control the legislative and executive organs of Government.........................The sovereign power therefore has to be exercised by the leaders under conditions in which public opinion develops the courage to resist coercion."

We must confess that this theory of sovereignty being vested in the dominant political party may not be accepted by any constitutional jurist. It does not accord with the provisions of the Constitution of India nor is it safe for the future of the Indian Republic to propound such a doctrine which may ultimately give a sort of constitutional sanctity to the totalitarian excesses of a political party long in power. Sovereignty must be adjudged with the eye of a jurist and not with the coloured glasses of a political chief puffed up with power. To suggest that the limitation to the sovereign power which is wielded by the dominant political party is the strength of public opinion to resist coercion, is indeed giving a *carte blanche* cheque to the puffed up politician of the dominant party. Public opinion may not rebel for long even under party tyranny for various reasons. To shift sovereignty from the people to the dominant political minority is a negation of democratic principles.

It is an abdication of power to such totalitarian bodies in a measure akin to the 'Comminform' of the U.S.S.R. In England the sovereign power is vested with the king in Parliament. In India it can only be with the people of India. The mouthpiece of the people is the Parliament of India as a whole. It is never the dominant political party such as the Congress party in Parliament. Shri K.M. Munshi's analysis makes it worse and appears to vest sovereignty not only in the Congress Legislative Party but in the Indian National Congress as a whole, since it had the thumping support of the people since independence. Hence according to this conception, if the ruling party is the Socialist party or the Communist party, sovereignty automatically shifts to them from the Congress. But sovereignty never shifts. It always resides in the people. If a political party gets into power by the majority vote of the people, the former is only the agent of the people to run the Government till it retains the people's confidence. The agent can never assume the role of the principal and usurp sovereignty to himself. To be allowed to use sovereign powers as an agent is not the same thing as owning sovereignty.

According to the Constitution of Eire 'Sovereign or Supreme Power is that which is absolute and uncontrolled within its sphere.' Cooley puts it thus "A State is sovereign when there resides within itself a supreme and absolute power acknowledging no superior." In the United States the supreme power resides in the body of the people. In the Indian Republic also the supreme power resides in the body of the people, enfranchised by universal adult suffrage (*Vide* Articles 325-326 of the Constitution). The word 'Republic' in the Preamble of the Constitution denote a Government where no one holds the public power as a proprietary right and where all power is exercised for the common good. In other words the inhabitants are subjects and free citizens at the same time. Republic is different from oligarchy, or class rule or party rule. Madison posited that a 'Republic is a Government which derives its power directly or indirectly from the great body of the people and is administered by persons holding their offices during pleasure, for a limited period or during good behaviour. It is essential to such a Government that it be derived from the great body of the society, not from an inconsiderable proportion or a favoured class." Mark ye, once we let in the fungus of a conception that in India the favoured or popular class as the Congress has sovereign power vested in it, the peoples' republic is erased and a totalitarian party in power is allowed to usurp the people's prerogatives of sovereignty. Such dangerous doctrines if promulgated by those in power will only herald utter ruin to the future of Bharat. Shri K.M. Munshi appears to be taken in by the dominance of the Congress in the legislative and executive fields. But the Congress is not the Nation. May be, it may lead the Nation. May be it is a very sound and patriotic organisation. But power corrupts the best. Hence if the doctrine of sovereign power vesting in the Congress is pushed far, the divesting may be difficult by constitutional means, resulting in power madness, chaos and a negation of constitutionalism. The expression 'Democratic Republic' in the Preamble can only mean that not only in substance political power must vest in the people but also that the form of Government must be republican. Terms such as 'Democratic' and 'Republic' convey a conception of Government by the people either directly or through elected representatives. If the latter, for a time the legislative and executive power is vested by the people to their representatives. That does not mean it is for all time nor does it mean that the people have divested their basic sovereign power in favour of their representatives. The people can register their protest against the ruling party's antics by public

opinion, a vote of no confidence in Parliament and finally by refusing their franchise to the party that misused power at the next election. Thus the basic attribute of sovereignty always resides with the people of India.

As the Preamble indicates the sovereignty vests in the Republic of India (which includes both the Union and the States). The authority who constituted this Republic of India is according to the Preamble 'the people of India' who it is that solemnly resolved to constitute India into a Sovereign Democratic Republic and to secure to its citizens, justice, liberty, equality and fraternity. Since it is the people of India that gave unto themselves a Sovereign Democratic Republic as set out in the Preamble and as the Constitution does not contain any mention of vesting of sovereignty in any body, it is futile to state that the people's sovereignty is taken away by any other body. Under the Constitution all the organs of Government, the Executive, the Legislature and the Judiciary are fully subordinate to the Constitution. No mention is made of political or legislative parties deriving sovereign power. Of course our Parliament as a whole has sovereign powers. This ultimate or political sovereignty does not oust the legalistic sovereignty vested in the people. As Prof. Laski opined the attempt to discover the sovereign authority in a Federal State, from the legalistic point of view is 'an impossible adventure.' May be by democratic practice the peoples' power passes to their representatives in the Parliament. Even the power of Amendment of the Constitution under Article 368 is vested in the Parliament. The ultimate sovereign power in India is vested at the Centre and is indivisible unlike in America where it is divided between the Union and the States. But all this power of Parliament as a sovereign body is derived solely from the people who it is that by their votes elect representatives to Parliament. But to say that sovereignty rests in the dominant minority in the country whose representatives control the legislatures and the Executive organs of Government is to betray the basic principle that in a Democratic Republic it is the people who are sovereign. Group leaders of a political party may wield much or all the power but so long as the Constitution of India stands as to-day it is indeed preposterous to urge that the dominant political party in India have sovereignty vested in them. Such doctrines may sound political propaganda for the party in power but it is certainly disastrous to National interests. India that is Bharat is owned by the people of India. Bharat can never be equated with the Indian National Congress or any other political body. The latter are all subordinate to the former and to the sovereign will of the people of India. We will conclude with the observations of their Lordships of the Allahabad High Court in *Motilal* v. *Government of Uttar Pradesh*[1]. "The framers of the Constitution attached all importance to the sovereignty of the people. It is a 'controlled constitution' in the sense of that its terms can only be altered with due formality............ The *laissez faire* doctrine of the last century was given up and a new dominant will to secure social, economic and political justice for the people was present in the life organism of the Constitution." It is the duty of the party in power to secure this for the people with the aid of the Instrument of Instructions adumbrated in Part IV of the Constitution—Directive Principles of State Policy. The party in power can only claim that much privilege to carry out the Directives for the benefit of the people. It can never claim more. Its privilege is in its duties and not in the usurpation of sovereign power which certainly cannot at any time be taken away from the people of India.

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1. A.I.R. 1951 All. 257 (F.B.).

ENHANCEMENT OF SMALL CAUSE JURISDICTION UP TO Rs. 2,000.

By

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Is the provision in Madras Act (XVI of 1951) which enhances the limit of Small Cause Jurisdiction for District and Subordinate Judges to Rs. 2,000 *intra-vires* the State Legislature in view of section 15 (3) of the Provincial Small Cause Court's Act which prescribes a limit of Rs. 1,000 for small cause jurisdiction ? This issue has been raised by Sri T. S. Ramanathan, Advocate, in the Madras Law Journal dated 21st July, 1955. The answer is furnished by the Entries 65 and 3 in the State List or List II of the Seventh Schedule read with Article 246 (3) of the Constitution of India. Entry 65 of the State List runs as follows : "Jurisdiction and powers of all Courts, except the Supreme Court with respect to any of the matters in this List." Entry 3 of the State list mentions "Administration of Justice" among others. Article 246 (3) of the Constitution of India confers exclusive power to make laws for the State on the State Legislature with respect to all the matters enumerated in the State List. The provision in Madras Act (XVI of 1951) enhancing the limit of small cause jurisdiction to Rs. 2,000 is in accordance with Entries 65 and 3 of the State List. The Small Cause Jurisdiction of District and Subordinate Judges in the Administration of justice is fully covered by these entries. The provision is thus quite *intra vires*. It lies in the realm of the State's exclusive power under our Federal Constitution. This power of the State Legislature under the Constitution of India is in no way affected by section 15 (3) of the Provincial Small Cause Courts Act (Central Act IX of 1887) enacted long before the Constitution Act.